

ADMINISTRATIVE REGULATION 2023-06
MAYOR BLESSING A. MOBOLADE

DATE: August 8, 2023

TOPIC: Private Activity Bond Fees

LEGAL AUTHORITY: City Charter §§ 3-10(b), 4-40 & 15-30; City Code § 1.2.314

1.0 Purpose and Scope: This Administrative Regulation sets the Private Activity Bond (PAB) fees assessed for the review of application and inducement resolutions, along with issuance fees related to the par amount of the debt taken on by a developer.

2.0 Terms Defined: "Private Activity Bond (PAB)" - a form of tax-exempt financing in which the City acts as the conduit issuer, but assumes no debt responsibility. Annually, the City receives an amount of volume cap for tax-exempt PABs, determined by population, from the Colorado Department of Local Affairs. The PAB program funds privately developed projects related to affordable housing under IRS Code.

3.0 Procedures:

3.1 In General: Pursuant to City Charter §§ 3-10(b) and 4-40, the Mayor shall perform all executive and administrative functions of the City, including promulgation of administrative regulations. Fees and charges set by the Mayor shall be implemented by administrative regulation as set forth in City Code § 1.2.314. The review, inducement, and issuance activities related to PABs facilitated through the City's Community Development Division are an administrative function of the City government.

3.2 Rescission of Administrative Regulation 2021-04: Administrative Regulation 2021-04 is rescinded and shall be replaced with this Administrative Regulation on the effective date below.

3.3 Establishment of Fees: The PAB fees are established as set forth in Exhibit A, Private Activity Bond Policy, which is attached and incorporated.

4.0 Miscellaneous

4.1 This Administrative Regulation shall become effective immediately, and shall remain in effect until amended or rescinded.

4.2 This Administrative Regulation shall be filed with the City Attorney and made available for public inspection on the City's website.

4.3 This Administrative Regulation does not limit, restrict or replace the Mayor's ability to exercise any authority granted by City Charter §§ 3-10(b), 4-40, or 15-30 or to utilize other applicable policies, procedures, rules, regulations and laws.



Blessing A. Mobolade, Mayor

APPROVED AS TO FORM:



Office of the City Attorney

EXHIBIT A

Private Activity Bond Policy

I. Overview

Each year, the City of Colorado Springs (City) receives an amount of volume cap for tax-exempt Private Activity Bonds, determined by population, from the Colorado Department of Local Affairs. The Private Activity Bond (PAB) program funds privately developed projects. The bonds are tax-exempt and the amount of the bonds issued are limited by the IRS. Underwriters use investor money called "bond proceeds" to make a loan to a project. The project then pays back the loan and the investors are repaid, plus interest. This program allows the City to issue these bonds for qualifying projects including:

- New construction or acquisition/rehabilitation of housing for low- to moderate-income people.
- Single-family mortgage revenue bonds (SFMRB) sold by local and state agencies for mortgages to low- and moderate-income people.
- Mortgage Credit Certificates (MCC) which is a bond allocation for qualified homebuyers.
- Manufacturing "small issue" industrial development bonds (not to exceed \$10,000,000) for construction of manufacturing facilities that produce goods.
- Qualified redevelopment bonds for acquiring property in blighted areas, prepare land for redevelopment, and relocate occupants of structures on the acquired property.
- Exempt facility bonds for hazardous waste facilities, solid waste disposal facilities, water and sewer facilities, mass commuting facilities, local district heating and cooling facilities, local electric energy or gas facilities and multifamily housing bonds.
- Qualified 501(c)(3) bonds for use by non-profit hospitals and private universities.

II. Applications

- a. Written applications for inducement and issuance of PABs are accepted when bond cap is available. The City may choose to set-aside a portion of its PAB allocation to be made available for projects applying for State of Colorado Low Income Housing Tax Credits (LIHTCs). Applications are to be submitted to the City's Planning and Community Development Department, Attn: Community Development Division Manager.
- b. At a minimum, applications must include:
 - i. Description of the applicant's previous experience utilizing PABs, including previous issuer, date of issuance, purpose, amount, and maturity schedule
 - ii. Expected bond issuance date

- iii. Name and contact information of bond counsel for the applicant, if known
- iv. Name and contact information of the proposed underwriter or lender, if known
- v. Estimated bond redemption and interest payment schedule, if known
- vi. Type of instrument utilized to secure the debt, if known
- vii. Description of current or pending litigation involving the applicant which may affect the validity or repayment of bonds, if applicable
- viii. Applications for qualified affordable rental housing projects must also include a narrative providing the following information:
 - 1. Type of housing
 - 2. Location
 - 3. Population served
 - 4. Bedroom mix
 - 5. Unit and project amenities
 - 6. Energy efficient design
 - 7. Project timeline
 - 8. Service commitments, if applicable
 - 9. Non-residential uses, if applicable
 - 10. Partnership structure, if known
 - 11. Development and property management experience
 - 12. Local, State, and Federal subsidies committed
- ix. Project pro-forma
- x. Market study, if available

NOTE: Please contact the City's Office of Economic Development for application requirements for projects other than qualified affordable rental housing.

III. Fees

- a. Non-refundable fees of \$1,000 and \$5,000 for application and inducement resolution, respectively.
- b. Issuance fee equal to 1% of the par amount of the PABs issued by the City. The application and inducement fees will be credited toward the issuance fee. The balance of the issuance fee is due at closing on the tax-credit financing for the project.
- c. Under the "program investment" rule of the Treasury Regulations, if a party "related" to the borrower (such as an investor in the tax credit partnership with an interest greater than 50%) also owns the bonds, the City issuer fee is not permitted to exceed 0.125% of the outstanding bonds on an annual basis beginning at the end of year 1. The City would not be able to collect the full amount of the issuer fee until there is no longer a party "related" to the borrower, which typically occurs, but is not guaranteed to occur, 2 to 3 years after the closing of the bonds when the bonds convert to a permanent loan. As a result of the delay (the time value of money) and lack of certainty (the project fails to convert to a permanent loan) in receiving the issuer fee, for projects that do not meet the "program investment" rule, it is proposed that the City will charge an issuance fee equal to 1.12% of the par amount of the PABs issued

by the City. The City will require that the issuer fee be put in escrow at the closing of the bonds and that a project meet the “program investment” rule no later than the conversion of the bonds to a permanent loan.

- d. No annual compliance fee.

IV. Review Process

PAB applications will be evaluated according to the following criteria:

- Project readiness (max 15 points)
- Experience with PAB financing (max 5 points)
- Amount of PAB request aligns with Colorado Housing Finance Authority guidelines (max 5 points)
- Project % of new affordable units (max 10 points)
- Area Median Income (AMI) levels of proposed occupants (max 10 points)
- Priority for special needs populations (max 5 points)

Completed applications will be scored and reviewed by an ad hoc committee consisting of City Planning Department staff assigned to the project, the City’s Community Development Division Manager, a representative from the City Attorney’s Office or bond counsel, and one or more representatives from the City Finance Department. The committee may request input from PAB staff at the Colorado Housing Finance Authority (CHFA) or the Colorado Department of Local Affairs, Division of Housing. The committee’s evaluation will result in one of the following:

- Denial of the application;
- A recommendation to refer the applicant to another PAB issuer;
- A conditional commitment to issue PAB for the project pending receipt of items for clarification requested by the committee;
- A recommendation to introduce a preliminary inducement resolution at an upcoming regularly scheduled meeting of the City Council.

NOTE: CHFA does not require a preliminary inducement resolution from a local issuer for projects intending to apply for State of Colorado Low Income Housing Tax Credits (LIHTCs). Applications of this type may be provided with a preliminary letter of support; however, this should not be considered a reservation of any of the City’s PAB allocation.

Applications which have not been completed with all required or necessary information for a period of 120 calendar days from submission of the application will be removed from further consideration to allow other applicants the opportunity for PAB funding. Thereafter, an application so removed from consideration may not be resubmitted until six (6) months from the date of removal from consideration. Fees collected for incomplete applications will be retained by the City and not credited toward a resubmitted application.

